

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff,

vs.

ROMAN ARAGON, *et al.*,

Defendants.

69cv7941-MV/LFG

RIO CHAMA STREAM SYSTEM

Section 7, Village of Chama

**SCHEDULING AND PROCEDURAL ORDER FOR DETERMINATION OF
PRIORITY DATES AND IRRIGATION WATER REQUIREMENTS
IN THE VILLAGE OF CHAMA SUBSECTION OF SECTION 7
OF THE RIO CHAMA STREAM SYSTEM**

This Order is entered by the Court pursuant to Fed.R.Civ.P. 16(b) to guide the course of the determination of priority dates and irrigation water requirements in the Village of Chama Subsection of Section 7 of the Rio Chama Stream System (“Chama Village Subsection”).

I. DETERMINATION OF PRIORITY DATES.

A. Under the November 19, 2002, procedural order for the adjudication of surface water irrigation rights in Section 7, the adjudication of priority dates and irrigation water requirements will be initiated by the State following the completion of individual subfile activity. The adjudication of the elements of water rights in individual subfiles in the Chama Village Subsection for irrigation water use is now complete with the exception of the determination of priority dates and irrigation water requirements.

B. The State of New Mexico proposes the determination of the following ditch-wide

priority dates for irrigated lands under pre-1907 ditches located in the Chama Village Subsection as described below:

<u>DITCH</u>	<u>PRIORITY DATE</u>
Chama Town Ditch*	1899
Chama Valley Ditch	1893
Chama Valley Ditch No. 1	1890
Chama Valley Ditch No. 3	1890
Tuck Creek Diversion No. 1	1900
Unnamed Ditch No. 4	1890

* with the exception of lands irrigated under a permit or license from the State Engineer as described below.

C. The State of New Mexico proposes the determination of the following priority dates for lands in the Chama Village Subsection that are irrigated under a final license issued by the Office of the State Engineer, or under an approved permit for the transfer of irrigation water rights, as described below:

<u>DITCH or SUBFILE</u>	<u>OSE LICENSE</u>	<u>PRIORITY DATE</u>
CHCV-001-0002 Orlando C. Beasely	No. 967	February 19, 1915
Chamita Valley Ditch	No. 968	February 19, 1915
Valley Ditch	No. 1242	September 27, 1918
Ranch 101 Ditch	No. 1241	June 7, 1918
M-B Ditch	No. 1974	November 27, 1931

TRANSFERRED RIGHTS

<u>Move-to Location</u>	<u>OSE PERMIT</u>	<u>PRIORITY DATE</u>
CHCV-001-0003 Mary Jean Miller	No. 1545 & 1699 into 1974-E	December 4, 1922
CHCV-001-0004 Jessie Fisher	No. 1545 & 1699 into 1974-E-A	December 4, 1922

CHCV-001-0005 Chama valley Independent School District No. 19	No. 1545 & 1699 into 1974-F	December 4, 1922
CHCV-003-0001 Porter Family Trust	No. 1974-B (3)	November 27, 1931
CHCV-003-0002(B) Dustin Boyd	No. 1974-B & 1974-B (2)	November 27, 1931
CHCV-006-0001 Donald M. Graham Janice Graham	No. 1545 into 1242 & 01792	December 4, 1922
CHCV-006-0002 Sky Mountain Resort RV Park	No. 1545 into 1242 & 01792	December 4, 1922

D. The State of New Mexico proposes the determination of the following priority dates for irrigation water use on lands irrigated by the Jicarilla Apache Nation under an approved permit for the transfer of water rights issued by the Office of the State Engineer, or for lands irrigated from a pre-basin groundwater well located on the Jicarilla Apache Reservation and used for irrigation purposes, as described below:

<u>Subfile No.</u>	<u>Acres</u>	<u>Ditch and/or Well(s)</u>	<u>Priority Date</u>
CHCV-001-0006	92.5	Mound Well Willow Creek Well	March 24, 1964
	181.8	Little Willow Creek North Ditch	December 4, 1922
		Mound Well Willow Creek Well	March 24, 1964
	23.2	Little Willow Creek North Ditch	February 2, 1926
		Mound Well	March 24, 1964

Willow Creek Well			
CHCV-005-0005	9.0	Little Willow Creek South Ditch	August 1, 1902
	88.15	Vaughn Well No. 1	August 14, 1963
CHCV-006-0006	50.75	Vaughn Well No. 1	August 14, 1963
	5.10	Iron Spring Well	April 25, 1964
	24.2	Vaughn Well No. 1 Iron Spring Well	August 14, 1963
CHCV-008-0001	8.4	Bear Canyon Well	May 1, 1964
	160.6	Iron Spring Well Bear Canyon Well	April 25, 1964
CHCV-009-0001	88.26	Well RG-19060	February 17, 1970

E. The adjudication of water right priorities in the Chama Village Subsection shall be completed in a show cause proceeding modeled on the process used in the determination of priority dates in Section 5 (Rio Gallina). *See Scheduling and Procedural Order for Determination of Priority Dates and Irrigation Water Requirements in the Rio Gallina Section of the Rio Chama Stream System* filed August 8, 2007 (Doc. No. 8752). The form of notice will inform the defendants that the Court has entered an Order that requires them to file an objection with the Court if they disagree with either: (1) the priority date proposed by the State for their own irrigation water rights or (2) the priority dates proposed by the State for any other irrigation water rights in the Chama Village Subsection. The Notice and Order to Show Cause will be served by mail on all individual subfile defendants in the Chama Village Subsection, including the United States and the Commissioners of each community ditch in the Chama Village Subsection that is a party to these proceedings. In the absence of an objection to the priority dates proposed by the State, the Court will enter a final order with respect

to priority dates of all irrigation water rights in the Chama Village Subsection. This determination of priority dates shall be subject to the right of water rights claimants in other Sections, or in other Subsections of Section 7, to object prior to the entry of a final decree. The defendants in the Chama Village Subsection will be informed that they will have no other opportunity to protest priority date determinations of the irrigation water rights in the Chama Village Subsection, and that subsequent *inter se* proceedings in the Chama Village Subsection will not include the opportunity to object to those determinations.

In cases where defendants in the Chama Village Subsection have previously agreed with the State on the priority for their water rights, and those priority dates have been incorporated into subfile orders entered by the Court, those priority dates cannot be challenged by those defendants. Other persons with standing may however file objections.

The State shall publish the Court's Notice and Order to Show Cause to inform defendants and all persons having water rights of any type in the Chama Village Subsection of their right to participate and offer evidence in support of objections to the proposed determination of priority dates for irrigation water rights in the Chama Village Subsection. The approved Notice shall be published once a week for four consecutive weeks in the *Rio Grande Sun*.

II. DETERMINATION OF IRRIGATION WATER REQUIREMENTS.

A. The State proposes the determination of the following irrigation water requirements for irrigated lands under pre-1907 ditches located in the Chama Village Subsection as described below:

- a. The weighted consumptive irrigation requirement (CIR) is 1.05 acre-feet per acre per annum (ac-ft/ac/an).
- b. The farm delivery requirement (FDR) is 2.63 ac-ft/ac/an.

- c. The project diversion requirement (PDR) is 4.38 ac-ft/ac/an.

The ditches in the Chama Village Subsection to which these amounts would apply are those identified in paragraph I (B) above. The irrigation water requirements in the Chama Village Subsection described above do not include diversion requirements associated with stockponds or other impoundments having valid water rights, which will be determined at a later date in these proceedings.

B. The State proposes the determination of the following irrigation water requirements for irrigation water use on lands in the Chama Village Subsection that are irrigated with surface water under a final license issued by the Office of the State Engineer, or under an approved permit for the transfer of water rights, as described below:

CHCV-001-0002: _____ OSE License No. 967

- a. CIR = 1.05 ac-ft/ac/an.
- b. FDR = 2.0 ac-ft/ac/an.
- c. PDR = 3.33 ac-ft/ac/an.

Chamita Valley Ditch: _____ OSE License No. 968

- a. CIR = 1.05 ac-ft/ac/an.
- b. FDR = 2.0 ac-ft/ac/an.
- c. PDR = 3.33 ac-ft/ac/an.

Valley Ditch: _____ OSE License No. 1242

- a. CIR = 1.05 ac-ft/ac/an.
- b. FDR = 1.5 ac-ft/ac/an.
- c. PDR = 2.5 ac-ft/ac/an.

The above irrigation water requirements will apply to all lands irrigated by the Valley Ditch under OSE License No. 1242 (including lands transferred to the Valley Ditch under OSE No. 1545 into 1242 & 01792) with the exception of the 73.9 acres of land described below.

Valley Ditch: _____ OSE License No. 1242

73.9 acres of land in Subfile CHCV-006-0005

- a. CIR = 1.0 ac-ft/ac/an.
- b. FDR = 1.0 ac-ft/ac/an.
- c. PDR = 1.67 ac-ft/ac/an.

A copy of a map prepared by the Office of the State Engineer showing the location of the 73.9 acres of lands described above is available for inspection at the Office of the State Engineer in Santa Fe. Copies of this map shall also included with the Court's Notice/Order mailed to the defendants in Subfile CHCV-006-0005.

Ranch 101 Ditch: OSE License No. 1241

- a. CIR = 1.05 ac-ft/ac/an.
- b. FDR = 1.5 ac-ft/ac/an.
- c. PDR = 2.5 ac-ft/ac/an.

M-B Ditch: OSE License No. 1974

- a. CIR = 1.05 ac-ft/ac/an.
- b. FDR = 1.5 ac-ft/ac/an.
- c. PDR = 2.5 ac-ft/ac/an.

The above irrigation water requirements will apply to all lands irrigated by the M-B Ditch under OSE License No.1974 with the exception of the lands in the locations described below.

M-B Ditch: OSE License No. 1974

3.4 acres of land in Subfile CHCV-003-0003
0.1 acres of land in Subfile CHCV- 003-0004
63.4 acres of land in Subfile CHCV-003-0024
0.2 acres of land in Subfile CHCV-003-0025
0.2 acres of land in Subfile CHCV-003-0026
3.2 acres of land in Subfile CHCV-004-0002

- a. CIR = 1.0 ac-ft/ac/an.
- b. FDR = 1.0 ac-ft/ac/an.
- c. PDR = 1.67 ac-ft/ac/an.

A copy of a map prepared by the Office of the State Engineer showing the location of the lands described above is available for inspection at the Office of the State Engineer in Santa Fe. Copies of this map shall also included with the Court's Notice/Order mailed to the defendants in the above six subfiles.

TRANSFERRED RIGHTS

<u>Move-to Location</u>	<u>OSE PERMIT</u>	<u>AMOUNT OF WATER</u>
CHCV-001-0003	No. 1545 & 1699 into 1974-E	CIR = 1.05 ac-ft/ac/an FDR = 1.5 ac-ft/ac/an PDR = 2.5 ac-ft/ac/an
CHCV-001-0004	No. 1545 & 1699 into 1974-E-A	CIR = 1.05 ac-ft/ac/an FDR = 1.5 ac-ft/ac/an PDR = 2.5 ac-ft/ac/an
CHCV-001-0005	No. 1545 & 1699 into 1974-F	CIR = 1.05 ac-ft/ac/an FDR = 1.5 ac-ft/ac/an PDR = 2.5 ac-ft/ac/an
CHCV-003-0001	No. 1974-B (3)	CIR = 1.05 ac-ft/ac/an FDR = 1.5 ac-ft/ac/an PDR = 2.5 ac-ft/ac/an
CHCV-003-0002(B)	No. 1974-B & 1974-B (2)	CIR = 1.05 ac-ft/ac/an FDR = 1.5 ac-ft/ac/an PDR = 2.5 ac-ft/ac/an
CHCV-006-0001	No. 1545 into 1242 & 01792	CIR = 1.05 ac-ft/ac/an FDR = 1.5 ac-ft/ac/an PDR = 2.5 ac-ft/ac/an
CHCV-006-0002	No. 1545 into 1242 & 01792	CIR = 1.05 ac-ft/ac/an FDR = 1.5 ac-ft/ac/an PDR = 2.5 ac-ft/ac/an

C. The State of New Mexico proposes the determination of the following irrigation water requirements for irrigation water use on lands irrigated by the Jicarilla Apache Nation under an approved permit for the transfer of water rights issued by the Office of the State Engineer, or for irrigation water use on lands irrigated from pre-basin groundwater wells located on the Jicarilla Apache Reservation and used for irrigation purposes, as described below:

<u>Subfile No.</u>	<u>CIR</u>	<u>FDR</u>	<u>PDR</u>
CHCV-001-0006			
Groundwater	1.05 ac-ft/ac/an	2.63 ac-ft/ac/an*	not applicable
Surface water	1.05 ac-ft/ac/an	1.5 ac-ft/ac/an	2.5 ac-ft/ac/an
CHCV-005-0005			
Groundwater	1.05 ac-ft/ac/an	2.63 ac-ft/ac/an*	not applicable
Surface water	1.05 ac-ft/ac/an	1.5 ac-ft/ac/an	2.5 ac-ft/ac/an
CHCV-006-0006			
Groundwater	1.05 ac-ft/ac/an	2.63 ac-ft/ac/an*	not applicable
CHCV-008-0001			
Groundwater	1.05 ac-ft/ac/an	2.63 ac-ft/ac/an*	not applicable
CHCV-009-0001			
Groundwater	1.05 ac-ft/ac/an	2.63 ac-ft/ac/an*	not applicable
		* measured at the well	

The irrigation water requirements in the Chama Village Subsection described above do not include diversion requirements associated with stockponds or other impoundments having valid water rights, which will be determined at a later date in these proceedings.

D. The adjudication of irrigation water requirements in the Chama Village Subsection shall be completed in a show cause proceeding using the procedures described above in connection with the determination of priority dates for water rights in the Chama Village Subsection. The form of notice will inform the defendants that the Court has entered an Order that requires them to file an objection with the Court if they disagree with the irrigation water requirements proposed by the State

for use in the Chama Village Subsection. The Notice and Order to Show Cause will be served by mail on all individual subfile defendants in the Chama Village Subsection, including the United States and the Commissioners of each community ditch in the Chama Village Subsection that is a party to these proceedings. In the absence of an objection to the irrigation water requirements proposed by the State, the Court will enter a final order with respect to irrigation water requirements in the Chama Village Subsection. This determination of irrigation water requirements shall be subject to the right of water rights claimants in other Sections, or in other Subsections of Section 7, to object prior to the entry of a final decree. The defendants will be informed that they will have no other opportunity to protest the determination of irrigation water requirements in the Chama Village Subsection, and that subsequent *inter se* proceedings in the Chama Village Subsection will not include the opportunity to object to this determination.

In cases where defendants in the Chama Village Subsection have previously agreed with the State on the irrigation water requirements for their water rights, and those amounts have been incorporated into subfile orders entered by the Court, those amounts cannot be challenged by those defendants. Other persons with standing may however file objections.

The State shall publish the Court's Notice and Order to show Cause to inform defendants and all persons having water rights of any type in the Chama Village Subsection of their right to participate and offer evidence in support of objections to the proposed determination of irrigation water requirements in the Chama Village Subsection. The approved Notice shall be published once a week for four consecutive weeks in the *Rio Grande Sun*.

E. The State shall coordinate the mailing and publication of the Notices regarding the determination of priority dates and irrigation water requirements so that these events and the stated

deadlines therein occur in a coordinated manner. The two Notices will be combined in a single mailing.

The Notices shall be mailed to the last known address of individual subfile defendants as they are listed in the Court's records. The State shall not be required to make a determination of current ownership of any tracts, nor mail notices to persons that are not a party to these proceedings. A successor-in-interest to an individual subfile defendant may request substitution of parties under Fed.R.Civ.P. 25(c) in order to participate in these proceedings.

F. After the deadline has expired for filing protests to the proposed determination of priority dates and irrigation water requirements, the State shall submit a proposed scheduling and procedural order to address and resolve any objections that are filed with the Court.

IT IS SO ORDERED.

MARTHA VÁZQUEZ
UNITED STATES DISTRICT JUDGE

Approved:

LORENZO F. GARCIA
UNITED STATES MAGISTRATE JUDGE